

ORIGINAL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GLORIA SHEPHERD,

Plaintiff,

v.

LAW OFFICES OF COHEN & SLAMOWITZ, LLP.

Defendant.

JUDGE CONNER

COMPLAINT

08 CIV. 6199

CIVIL ACTION NO:

INTRODUCTION

1. This is an action for damages and declaratory judgment brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter, "FDCPA") and New York General Business Law § 349 (hereinafter, "NYGBL § 349").

2. Plaintiff also sues Defendant for Defamation.

3. Plaintiff brings suit based on the unfair, abusive and deceptive practices employed by Defendant in its attempt to collect an alleged debt from Plaintiff.

JURISDICTION AND VENUE

4. The Court's jurisdiction is conferred by 15 U.S.C. § 1692k.

5. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.

6. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

7. Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUL 10 2008

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SOUTHERN DISTRICT OF NEW YORK
JUL 10 2008

PARTIES

1. Plaintiff Gloria Shepherd (hereafter, "Mrs. Shepherd") is a natural person who resides in White Plains, New York.
2. Mrs. Shepherd is a consumer under the FDCPA, § 1692a(3).
3. Defendant Cohen and Slamowitz, LLP (hereafter, "C&S") is a limited liability partnership engaged in the business of collecting debts in this state, with its principal place of business located at 199 Crossways Park Drive, Woodbury, NY 11797-9004.
4. C&S's principal purpose is the collection of debts and C&S regularly attempts to collect debts alleged to be due another.
5. C&S is a debt collector under the FDCPA, §1692a(6).

FACTS

6. In approximately December, 2007, Ms. Shepherd's bank account was restrained by Defendant, allegedly on the basis of a default judgment obtained in MRC Receivables Corp. v. Shepherd, CV 2005-1743, an action brought by MRC Receivables Corp. (hereinafter "MRC") against Mrs. Shepherd in White Plains City Court ("the State Action"), in which C&S was MRC's counsel of record.
7. At the time the above referenced State Action was commenced against Mrs. Shepherd, she had already settled the debt in full and provided written proof of same to Defendant in the form of cancelled checks.
8. Specifically, Mrs. Shepherd settled this debt in November/December of 2004 and, in response to Defendants' debt collection efforts provided Defendants with copies of

pecuniary harm.

15. The monies which C&S sought to collect from Mrs. Shepherd are a “debt” under the FDCPA, § 1692a(5).

FIRST CAUSE OF ACTION

The Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (“FDCPA”)

16. Mrs. Shepherd repeats and re-alleges and incorporates by reference the foregoing paragraphs.

17. Defendant’s actions and omissions as set forth above constitute violations of the FDCPA, defendants violated the FDCPA. These violations include, without limitation:

- a. Threatening, attempting and/or actually taking collection activity against Mrs. Shepherd with regard to a debt she already had already paid/settled, in violation of §§1692e, 1692e(2); 1692e(5); 1692e(8); 1692e(10); 1692f, 1692f(1).
- b. Communicating directly with Mrs. Shepherd when Defendants knew she was presented by an attorney with respect to such debt and had knowledge of such attorney’s name and address, in violation of § 1692c.
- c. Sending Mrs. Shepherd a deceptive and/or misleading letter, dated January 31, 2008, which did not make clear that by offering to vacate the judgment against Mrs. Shepherd other than “with prejudice”, Defendants had reserved their ability to refile the state action at a later date, in violation of §§1692e, 1692e(2), and 1692f.
- d. Reporting to one or more Credit Reporting Agencies that Mrs. Shepherd owed

THIRD CAUSE OF ACTION
Defamation

22. Mrs. Shepherd repeats and re-alleges and incorporates by reference the foregoing paragraphs.

23. Defendant made false and defamatory statements concerning Mrs. Shepherd.

24. Specifically, and without limitation, Defendant stated that Mrs. Shepherd was late in paying a debt when, in fact, Mrs. Shepherd had already paid/settled the alleged debt.

25. Defendant knew or should have known that that these statements were false.

26. Defendant published these statements to numerous third parties, including the Credit Reporting Agencies.

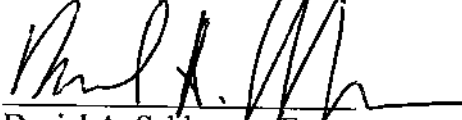
27. The publication of these false and defamatory statements to said third parties resulted in injury, including pecuniary injury, to Mrs. Shepherd.

WHEREFORE Mrs. Shepherd respectfully requests this Court to:

- a. On the FIRST CAUSE OF ACTION (FDCPA), Declaratory Judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692 k;
- b. On the SECOND CAUSE OF ACTION (NYGBL § 349), actual damages, three times the actual damages up to \$1000, costs and reasonable attorneys fees pursuant to NYGBL § 349(h);
- c. On the THIRD CAUSE OF ACTION (DEFAMATION), actual damages, punitive damages, costs and reasonable attorneys fees;

d. Award such other and further relief as law or equity may provide.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Daniel A. Schlanger', written over a horizontal line.

Daniel A. Schlanger, Esq.
Schlanger & Schlanger, LLP
1025 Westchester Ave., Suite 108
White Plains, NY 10604
Ph: 914-946-1981
Fax: 914-946-2930
email: daniel@schlangerlegal.com

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0744
 RECIPIENT ADDRESS 815163847266
 DESTINATION ID
 ST. TIME 12/07 09:28
 TIME USE 00'47
 PAGES SENT 6
 RESULT OK

GLORIA SHEPHERD
 17 Lincoln Avenue
 White Plains, New York 10606
 Tel: (914) 481-4034
 Cell: (914) 426-3016

facsimile transmittal

To: Gene Michaels-

Fax:

(516) 364-7266
 (516) 584-1008

Cohen & Slomowitz, LLP

From: Gloria Shepherd

Date: 12/07/2005

Re: Midland Credit Mgt- for

Pages: 2 with cover

Household/Orchard Bank

CC: File No. C 142446

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

Dear Mr. Michaels:

Enclosed please find copies of the two checks that were cashed by Midland Credit Management, last year to close out this account. It was a great struggle to pay such a large sum for me at the end of the year, but I felt that the savings outweighed the sacrifice.

Please see attached letter for details.



Period:
Page:



Check Images

GLORIA SHEPHERD
17 LINCOLN AVE.
WHITE PLAINS, NY 10606-1807

PAY TO THE ORDER OF *ATtn* \$ 115.00
One hundred and fifteen DOLLARS

THE BANK OF NEW YORK
100 WALL STREET, NEW YORK, NY 10038

Gloria Shepherd

100000203 6703620777 0203 0000011500

Ck. No.203 12/20 \$115.00

Midland Credit
→

GLORIA SHEPHERD
17 LINCOLN AVE.
WHITE PLAINS, NY 10606

THE BANK OF NEW YORK
500 ASHFORD AVE
ARDELEY, NY 10502

PAY TO THE ORDER OF *Midland Credit* CHARGE 00000203
MIDLAND CREDIT MANAGEMENT, INC.
8075 AERO DRIVE
SAN DIEGO, CA 92123 12/31/04
\$470.00

THE SUM OF 470 DOLLARS AND 00/100THS
Payable in U.S. Funds

MEMO: 0007249360

SIGNATURE NOT REQUIRED

00000203 6703620777 0203 0000047000

Ck. No.203 01/06 \$470.00

Account No. 670-3620777

12/20/04 PAID
BANK OF NY
HARRISON NEW YORK
2200748095

12/17/04
210010884
BANK OF NY
HARRISON NEW YORK
4200049644

12/17/04

12/17/04

Ck. No.203 12/20 \$115.00

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0210000000
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1220 680102578
2200708888
0210000000
850000
1220 680102578
0624316629

Ck. No.203 01/06 \$470.00

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850000
1220 680102578
0624316629

12/23/04 PAID
BANK OF NY
HARRISON NEW YORK
2200777177

12/23/04

Ck. No.204 12/23 \$225.00

12/26/2007 22:23 9146846137

FEDEY KINKOS

PAGE 81

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 TX REPORT

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 ST TIME 12/09 16:11
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Date:

12/9/06

FACSIMILE TRANSMISSION COVER SHEET

To:

Gen. Michael

Firm/Company:

Law Offices of Cohen

Fax No.: (516) 584-1008

From:

Gloria Shapiro / SIA MOWITZ, LLP

Phone: (516) 686-8989

Re:

Household / Orchard Bank

Our Reference:

Your Reference:

C 142440

Pages to Follow:

COMMENTS:

MR. Michael -

As discussed, enclosed please
 find copies of the bank of New York
 microfiche of the two checks paid
 to Midland Credit Management, Inc -
 last year.

Sincerely, Gloria Shapiro

12/26/2007 22:16 9146846137

FEDEY KINKOS

PAGE 01

DDA: 6703620777

Page 1 of 1

Check Image Archive

Image View

Dec 1 2005

04:32:29 PM

GLORIA SHEPHERD
17 LINCOLN AVE

WHITE PLAINS, NY 10606

THE BANK OF NEW YORK
500 ASHFORD AVE

ARDSLEY, NY 10502

Pay to the Order of

660140525 29 120204 CHARGE 00000202

MIDLAND CREDIT MANAGEMENT, INC.

8875 AERO DRIVE

SAN DIEGO, CA 92123

11/30/04

\$500.00

THE SUM OF 500 DOLLARS AND 00/CENTS
Payable in U.S. FundsMEMO:
8507249365

0 PH

SIGNATURE NOT REQUIRED

Your controller has authorized this payment to you.
 Please to make the transfer for payment of this payment.
 This document shall be deposited only to the credit of you
 and should not be deposited to anyone's bank.

⑈00000202⑈ ⑈021902352⑈

6703620777⑈ ⑈0000050000⑈



THE SECURITY FEATURES INCLUDED WITHIN
 THIS CHECK EXCEED INDUSTRY STANDARDS

021000089
 5000000
 1862 660140525 120204
 6216 12/31/04 PAID
 CHARGE MFC NY
 HARRISON NEW YORK
 2500821594

MFC NA-DL, CA 921204
 TRACK 3488 EXT 626
 122105278
 0324826093

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 RESERVED FOR FINANCIAL INSTITUTION USE

FOR THE BANK OF NEW YORK
 WELLS FARGO BANK
 FOR DEPOSIT ONLY
 MIDLAND CREDIT
 MANAGEMENT INC.
 448888722

EAD00811 XE00E

View Selection	Posting Date	Amount	Serial No.	Sequence No.	Source	Type	Status	Description
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DDA: 6703620777

Page 1 of 1

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Dec 1 2005

04:42:39 PM

GLORIA SHEPHERD
 17 LINCOLN AVE
 WHITE PLAINS, NY 10606

THE BANK OF NEW YORK
 500 ASHFORD AVE
 ARDSLEY, NY 10502

Pay to the Order of
 MIDLAND CREDIT MANAGEMENT, INC.
 8875 AERO DRIVE
 SAN DIEGO, CA 92123

660102578 29 010505 CHARGE 00000203
 12/31/04

\$470.00

THE SUM OF 470 DOLLARS AND 00/CENTS
 Payable in U.S. Funds

MEMO:
 8507249365
 G PH

SIGNATURE NOT REQUIRED

Your checkwriter has guaranteed this payment to cash.
 Please do not cash this check for cashed or cashed amount.
 This document shall be delivered only to the payee of funds
 and amount of disbursement is guaranteed by sign's payee.

⑈00000203⑈ ⑆021902352⑆

6703620777⑈ ⑆0000047000⑈

021000089
 800000
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 8215
 CHASE PAID
 BANK OF NEW YORK
 HARTSON NEW YORK
 2200708838

NY 100-111, CA 11/22/05
 TRADER 3222 FKT 126
 122105278
 0624316629

View Selection	Posting Date	Amount	Serial No.	Sequence No.	Source	Type	Status	Description
6	01/09/2008	\$470.00	293	000000000000022709506	Check	Debit	Post	CHECK

SCHLANGER & SCHLANGER, LLP
ATTORNEYS AT LAW

1025 WESTCHESTER AVENUE, SUITE 108
WHITE PLAINS, NEW YORK 10604
TEL: 914-946-1981 • FAX: 914-946-2930

Michael Schlanger, Esq.
Daniel Schlanger, Esq.*
*Admitted in NY & OH

email: daniel@schlangerlegal.com
website: www.schlangerlegal.com

January 21, 2007

David A. Cohen, Esq.
Cohen & Slamowitz, LLP
199 Crossways Park Drive
Woodbury, NY 11797

Re: MRC Receivables Corp. v. Shepherd, CV 2005-1743
Our file number: 30.633

Dear Mr. Cohen,

This office represents Ms. Gloria Shepherd in the above referenced matter. You recently restrained my client's bank account on the basis of a default judgment. Ms. Shepherd settled this debt in full in December, 2004. In this regard, please see the attached documents, including her previous correspondence with your office in December, 2005 and December 2006 supplying you with irrefutable proof of her payment prior to commencement of this lawsuit. In addition, Ms. Shepherd did not receive proper service of the Summons & Complaint.

Your office's behavior in this case is egregious, and violates, inter alia, various provisions of the FDCPA, including but not limited to 15 U.S.C. 1692(f), (f)(1), (e), e(2), e(8) and e(10). As you may be aware, pursuant to 1692(k), a prevailing consumer is entitled not only to actual and statutory damages, but also mandatory costs and attorneys fees. If you wish to avoid litigation please take all of the following steps on or before February 1, 2008:

1. Deliver a certified check made out to Schlanger & Schlanger, LLP in the amount of \$2750 to my office at the address listed above. This check must be received on or before February 1, 2008
2. Prepare and sign a Stipulation To Vacate Judgment, vacating the judgment against my client signed by both your firm and the plaintiffs. Send this document to my attention. Assuming I find it satisfactorily drawn, I will sign it and file it with the Court.
3. Send Ms. Shepherd's bank a Release of Execution cancelling the restraint you have placed on her account, copy to my attention.

4. Instruct all three major Credit Reporting Agencies in writing that you are vacating the judgment against my client; that this debt was settled in full in December 2004; and that the trade line regarding this debt is to be deleted. Send a copy of each letter to my attention.

Failing to receive all of the below by February 1, 2008, I have been instructed to proceed against your firm and all other responsible parties without further notice.

Regards,


Daniel Schlanger

Law Offices
Cohen & Slamowitz, LLP

(516) 686-8950

(800) 293-6006 ext. 8950

Fax 516 908-7993

199 Crossways Park Drive
P.O. Box 9004

Woodbury, NY 11797-9004

January 31, 2008

GLORIA SHEPHERD
17 LINCOLN AVE
WHITE PLAINS NY 10606

Re: Original Creditor: HOUSEHOLD/ORCHAR D BANK
Creditor: MRC Receivables Corp.
Account No. 5413360051236857
C&S File No. C142446
Index No. 1743/05

Dear GLORIA SHEPHERD:

ENCLOSED PLEASE FIND A CONSENT TO VACATE JUDGMENT IN CONNECTION
WITH THE ABOVE REFERENCED MATTER. KINDLY RETAIN THE DISCONTINUANCE FOR
YOUR RECORDS.

IF YOU SHOULD HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO
CONTACT THIS OFFICE.

VERY TRULY YOURS,

COHEN & SLAMOWITZ, LLP
BY: MITCHELL G. SLAMOWITZ, ESQ./DAVID A. COHEN, ESQ.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.

[Note: Exhibit redacted by Plaintiff's counsel to omit information protected by attorney client privilege.]

CITY COURT OF CITY OF WHITE PLAINS
COUNTY OF WESTCHESTER, STATE OF NEW YORK

-----X
MRC Receivables Corp.

PLAINTIFF,

INDEX NUMBER 1743/05
FILE NO. C142446

-AGAINST-

GLORIA SHEPHERD

CONSENT TO VACATE
JUDGMENT

DEFENDANT(S).

-----X
IT IS HEREBY CONSENTED TO, BY THE UNDERSIGNED, THAT THE
JUDGMENT ENTERED AGAINST GLORIA SHEPHERD ON November 2, 2005 MAY BE
VACATED BY THE CLERK OF THE COURT.

DATED: January 31, 2008

COHEN & SLAMOWITZ, LLP
BY: MITCHELL G. SLAMOWITZ, ESQ./DAVID A. COHEN, ESQ.
ATTORNEYS FOR PLAINTIFF

PConVsc

[Note: Exhibit redacted by Plaintiff's counsel to omit information protected by attorney client privilege.]